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THE

CONSTITUTION

Asserted and vindicated.



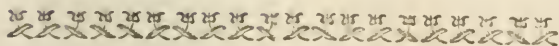
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THE
CONSTITUTION
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[Price One Shilling.]

THE
CONSTITUTION

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THE title of this paper, it is presumed, should engage the attention of the public. Yet if it should appear to have been written upon any other motives, than those of public concernment; if the writer can be suspected of a design of raising the prerogative of the crown upon the ruins

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of

of liberty, and paying a servile adulation to ministry ; or, on the other side, if he can be charged with exercising the spirit of invective against the opposition, or even of indulging the spleen of laughing at some certain names, when joined with the ideas of honesty, patriotism and virtue ; if these can be supposed the motives of his writings, let him be treated with contempt and indignation. He has vilely betrayed the cause he pretended to support. But, on the contrary, if he hath asserted the liberty of the press, without abusing it ; if he hath endeavoured to vindicate the rights of the constitution ; if he hath stated facts with truth, and argued from them with more than the integrity of mere argument, with honesty, and the conviction of his understanding, let him be read with that

attention, which the importance of his subject demands. He makes no other preface to his work.

THE constitution, under whose influence we are the happiest people upon earth, was foreseen, in mere theory, by the most sagacious of all political writers. Yet he only foresaw the general possible idea of such a form of government. He despaired of the probability of its ever being carried into execution. Yet this form of government, the despair of human wisdom, was originally found among savages, in the deserts of Germany. The wild, uncultivated principles, upon which it was formed, were transplanted hither; to a soil, more kindly to them, than that of their native climate, and to a culture more attentive to their growth
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and improvement. Here they have been preserved through a thousand changes of despotism, tyranny, aristocracy, oligarchy, democracy and anarchy. They have maintained themselves, through all these changes, in almost their first simplicity and vigour, like the *flamina vitæ* of a good natural constitution, through all the distempers which *flesh is heir to*, and even the experiments of quacks and empiricks.

THE first magistrate in this form of government, is indeed the principal mover, I had almost said the soul of the whole system. Many other princes of Europe have an appearance of more authority annexed to their persons, but none more real greatness. He is only restrained from hurting himself, or his people.

ple. He possesses every power of doing good; indeed, every power, that can contribute to render him more beloved by his people; more respected and revered. Our ancestors, as if to make their monarch some amends for this seeming want of authority, or rather to support the dignity of the crown, whose honours they considered as their own, threw many circumstances of splendour round him, unknown to any other, but the Sovereign of Great Britain. He is waited upon by his servants, with peculiar marks of respect and reverence. So excellent do the laws suppose him, that they declare him incapable of doing wrong. His person is not only sacred, and protected from all attempts of actual violence. It is treason to imagine his death.

FROM

FROM hence it follows in consequence of facts, if I may be allowed the expression, not of mere reasoning, that in the very moment, when any attempt, however unsuccessful, is made upon his person; whenever any insult, though impotent, as unmerited, is offered to his good name, in that very moment, the constitution is violated; whenever he is, under pretence of Law, accused, arraigned, condemned for crimes, which the law declares him incapable of committing, at that very moment, the constitution is dissolved. Its very being is destroyed. We may begin to erect a better upon its ruins.

THESE, it is confessed, are honourable and important prerogatives. To make them more important, more honourable,
they

they do not descend by dull succession from king to king; by lineal descent from father to son; by divine, hereditary, indefeasible right; by the arch-bishop's *providentia divina*, or the bishop's *divine permission*. The present royal family must disclaim, for their ancestors, for themselves and their posterity, such visionary titles of this world; such unproved and disputable claims from the other. Their rights are founded in the constitution, and must subsist with it, let every Englishman say AMEN! for ever. Let me only be permitted to add, that in strictest propriety of expression, liberty has founded all these prerogatives, and granted them to the crown for its own sake, for the sake of the people.

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THE second estate, that enters into our political system, is that of the nobility. It enters with greater splendor and dignity, than influence and power. It has its being in the constitution, but it receives its honours from the crown, and reflects a lustre on the prince, from whom it receives them.

SOME of the privileges this respectable body enjoys, were probably granted them (such as the immunity of their persons from arrests of debt, &c.) because they were perpetual members of parliament, and consequently their perpetual attendance was required upon the business of the nation. In other instances (such as their pronouncing sentence, in cases of life and death, upon their honour) this
 very

very distinguishing privilege, in which the bishops, from the sanctity of their characters, can have no share, was probably given them, to raise our ideas of their justice and integrity, that they might meditate between the prince and people, with greater dignity and weight.

I SHALL not dwell upon these privileges and immunities, because they do not enter immediately into our present unhappy disputes. The noble persons themselves may perhaps be hereafter employed in one of the most honourable offices they claim by their birth-right, that of mediating between the other estates, of which the constitution is composed, and moderating with equity the severity of law, for the sake of the law itself. I shall therefore only say, that

all their privileges were appointed by the wisdom of our ancestors, in view to the general honour, security, happiness and permanency, I hope, the perpetuity, of the constitution.

ONE particular, however, that regards a separate branch of this very venerable body, may be well worthy of our best attention. A Lay-Nobleman claims a right by his birth of being tried by his peers. This privilege was granted him, because, being naturally exposed by his station to envy and resentment, he could not otherwise enjoy those equal universal benefits of the constitution, to which he was entitled as an Englishman. Yet this extraordinary privilege is not, by the constitution, granted to the bishops. In any criminal process, they shall be tried by

by their country, that is, by freeholders, *for that they are not of the degree of nobility.* They hold their seats in Parliament, *not as dukes, marquisses, counts, viscounts and barons, but by reason of their baronies, as in time past some abbots and priors.*

IF we recollect at what a period of the power and influence of the clergy, this noblest privilege was refused to their pride and ambition; if we reflect, that a bishop, in those days, like the philosopher in Horace, was pious, learned, wise, humble, hospitable, and only not a saint, we shall entertain a very honourable idea of the spirit and wisdom of the founders of our constitution. Such reflections will perhaps impress upon us a more awful idea of the

constitution itself; the sole intention of these papers.

THE third estate enters into the constitution with less dignity and splendor, but with greater influence and power. An absolute and undivided command over the treasures of the nation, extends their authority through every part of government. All honours in the state are open to their ambition; all employments to their abilities. Many of their privileges arise from the constitution; such as the immunity of their persons, during their attendance on the business of parliament; such as their not being accountable to any other power, but that of their own house, for any expressions used in their debates.

It

It seems the peculiar wisdom of the constitution to suppose, in every department of government, some latent powers silently residing there, and reserved for great and critical occasions. Their authority, not unaptly called reason of state, is supported by the necessity of conjunctures prior to, and superior to all laws. When the public safety is concerned, this reason supercedes all law. It is submitted to with silence and respect, until it is apparently abused. It perhaps would be dangerous, I mean to the public, to inquire too curiously into the strict and punctual legality of all the powers, exercised by government, and all the privileges claimed by the subject. It would be imprudent to ascertain their bounds, and to determine, thus far only they shall

shall extend. Perhaps, the power of pressing seamen should not be too strictly examined. There are mysteries in politics, as well as in religion, which a good politician and a good christian should endeavour to believe, without attempting even to understand. May the right of resistance in the people be for ever supposed ! may it never be defined or explained !

LET us prove this reasoning by an instance, though of a much inferior nature, yet not without importance in itself, and strictly applicable to the subject matter of these papers. The government has uniformly and uninterruptedly exercised a power of issuing warrants against state-criminals, *without information upon oath*

oath, and without specifying the crime, of which they were accused. I will not take the proofs of this assertion from periods of arbitrary power and prerogative, but from that glorious æra of British liberty, the Revolution. In the year 1689, the Earl of Arran, Sir Robert Hamilton and others, were sent to the Tower, and the Lords voted an address of thanks to the King for his care of their liberties. In 1692, the Earls of Huntington and Marlborough were committed to the Tower on the 5th of May, where they continued to the 15th of the next Month, when they were admitted to bail at the King's-Bench bar. Several gentlemen were at the same time sent to Newgate, by virtue of the same warrants. When the parliament met, the Earls laid their
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complaint before the House of Lords,
*That they had been committed to the Tower
 by warrants, in which it was not said,
 that any information was given against
 them upon oath, and which they alledged
 to be required by law.*

I SHALL only remark upon this important event, that the laws had then a Lord Chief Justice, who did not *dismiss them, upon their plea of privilege.* With the conscious integrity and firmness of an upright and honest man, as well as with the dignity of his profession, he nobly opposed both Houses of Lords and Commons, in different disputes with regard to their privileges, and was honoured with the thanks of both Houses for his opposition.

I WILL not entertain so mean an opinion of my readers, as to imagine it necessary to mention any other of the numerous instances, that might be given on this occasion. Whoever pleases to read over the history of the four last reigns, that period of our history most favourable to liberty, will find, that this has been the constant and invariable practice of government, except when, upon extraordinary occasions, the *Habeas corpus Act* has been suspended. Even during the sitting of parliament, the members of both Houses have been arrested. The King sends a message to the House, whose members had been arrested, which has constantly been answered with an address of thanks, for his care of their liberties:

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WHAT

WHAT could our ancestors, those founders of liberty and the constitution, mean by intrusting administration with a power, which was apparently liable to be much abused? Did they not foresee the possibility, at least, of this abuse? Unquestionably. But they foresaw many a probable concurrence of circumstances; many a crisis, too full of danger, to wait for the regular forms of law. In matters of great importance, the moment of deliberation and execution is the same.

“ The crime is not yet committed. It
 “ is only intended. It is absolutely ne-
 “ cessary, for the public safety, to pre-
 “ vent it. The information, so it has
 “ happened, may be given by some foreign
 “ power in friendship with our court.
 “ It may be an anonymous Advertise-
 “ ment,

“ ment, like that of the Gunpowder-plot.
 “ The person, who makes the discovery
 “ may demand the honour of govern-
 “ ment, not to be produced as a witness.
 “ The criminal may have notice of any
 “ common process by a Justice of Peace.
 “ He has time to secrete or destroy the te-
 “ stimonies of his guilt. He may es-
 “ cape from justice. He may still com-
 “ mit the crime, of which he is ac-
 “ cused.”

It was besides considered, that the
 Ministers, who issue these war-
 rants, are answerable for any illegality
 either in the grant or execution. For
 these reasons therefore, and others, per-
 haps, more important, our ancestors have
 tacitly placed this power in the Secre-

ries of State. The legality of it has indeed been disputed in our Courts of Justice, and wisely left undecided. Yet even this indecision is a strong presumptive argument in its favour, and an encouragement to continue it. May we never have a Secretary of State, who, in doubt of the validity of this power, may be tempted to exercise any other ! I shall only add, that we may not lose the application of all this reasoning, that the present secretaries of State acted, on a late occasion, upon this constant practice of their office, handed down to them even through times most jealous of public liberty ; most apprehensive of the prerogatives of the crown. Besides, they were particularly authorised in the warrant, issued against Mr. Wilkes. It
was

was an exact copy of that, by which Mr. Shebeare was arrested, and which was signed by Lord Chief Justice P ——t, when he was Attorney-general.

THERE is only one instance, with regard to crimes, that affect, or seem to affect the state, in which this power of government does not act without control. The perfect freedom of debate in parliament is so essential to liberty; so absolutely necessary, even in the original idea of all debates, to the proofs of either the rectitude or depravity of any measure, proposed to be considered, that it never can submit to any kind or degree of restraint, imposed by power and authority. The magistrate or minister, of what denomination soever, who should attempt to control this freedom by the

terrors of his office, would be guilty of
 a greater crime, than that of *læſæ majes-*
tatis; the *crimen læſæ constitutionis*. It
 is an high infringement of the privileges
 of parliament, that even the King him-
 ſelf ſhould appear to know the queſtions
 under debate, until the deciſion of them
 comes before him in due courſe of law.
 He may then, by virtue of his preroga-
 tive, reject, if he diſapproves; if he ap-
 proves, he is appointed to execute. But
 never ſhould the legiſlative and executive
 powers be lodged in the ſame perſon;
 never ſhould the perſon, who is to carry
 a meaſure into execution, have any con-
 cernment, influence or intereſt in form-
 ing it. Thus ſpeaks all political under-
 ſtanding in a free country, *a priori*;
 thus

thus speaks, at present, the British constitution.

But as the King, consistently with the character and office he sustains, cannot enter into the debates of his parliament without violating their privileges, so neither could he enter into them with dignity to himself. He must either, expose himself, unhappy choice, and perhaps of equal ignominy! to be flattered or censured. Even his name should never be mentioned in a debate, in view to the merits of the question.

No member of either House can be named in the other; no one, in the same house, can be mentioned by his name. These are orders and rules of decency
and

and decorum. Shall the King's name be treated with less form and decency ?

The distinction of considering the King's speech, as the speech of the ministry, under a pretence of opposing it with greater decency, is a modern artifice, invented, if I mistake not, in 1718 by Mr. Walpole, and too incautiously, though ingenuously acknowledged by Mr. Craggs. The constitution knows nothing of these distinctions. To treat the speech, in general, with decency and respect ; to consider the wisdom and utility of the measures it proposes, and either to reject or receive them upon the arguments of public good—these are the sole objects of a parliamentary debate. All the rest is little more than an angry, ambitious op-

opposition on one side, and the servile flattery of courtiers on the other. How dreadful are the consequences! A measure, wise in itself and salutary, shall be lost to the public by a personal resentment to the minister, or some iniquitous scheme imposed upon us by the ready flattery, paid to the appearance of some undue prerogative. The virtues of the Sovereign, his piety, honour, integrity, and love for his people, shall be urged, by the mere creatures of favour and employment, as reasons to prove the excellence of the measure proposed, and as motives to intrust him with our lives and liberties. On the contrary, the detestation of the minister, whether it arise from his virtues or his vices; whether from his person, his alliances, his friendships,

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his birth, or even the place of his birth, shall be deemed a sufficient reason for rejecting, with a kind of popular horror, a scheme perhaps of equal honour and advantage to his country.

IN the strongest expressions, that my ideas of liberty and the constitution could suggest, I have asserted the freedom of debate in parliament. If my private opinion were of any weight, I should not scruple to affirm, that it ought to be esteemed as dear to liberty, as any other privilege or right of Magna Charta. The Habeas corpus Act may be suspended, and even the mischiefs arising from any casual violation of it, are less extensive, less dangerous. Yet since every thing, that is human, must submit to the
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common lot of humanity, this inestimable privilege must submit to be restrained within some certain bounds. It will otherwise soon degenerate into low altercation and personal dispute. Faction shall assume rather more than the freedom of patriotism, and opposition shall talk treason.

LET us endeavour to apply this general reasoning to a particular instance. Let us suppose, that some certain expressions in the North Briton, which an honourable Member of the House of Commons is accused of having written, had been spoken by him in the House. Some of the King's servants; some lover of the decency due to all public debates; some friend to the constitution, would

probably have called upon the gentleman either to retract, explain, or excuse them. I will not presume to judge in what manner the House would determine on the occasion, because the affair, in its present form, will certainly come very soon before them. Yet Mr. Shippen was sent to the Tower for only lamenting it as a misfortune to the nation, that King George the first was a stranger to our language and the constitution. Sir William Wyndham was very near being sent to the Tower, and was reprimanded by the Speaker, by order of the House, for an indignity offered to his Majesty in reflecting on his proclamation. Yet without meaning any invidious insinuation either of difference or comparison between these gentlemen and the present ho-

honourable Member, it is necessary, in the course of argument, to observe, that Mr. Shippen was a man of eminent probity in private life, and almost peculiar integrity in his public character ; of great parliamentary abilities, and a very weighty Speaker. Sir William Wyndham, besides the natural interest of a great fortune ; besides the connexions of his birth and family, was unquestionably the ablest debater, and the most powerful Speaker, that ever sat in the House of Commons. I should indeed confess, that I do not mean to call him a *powerful Speaker* with regard to the present ideas of eloquence, which seems to consist in figures of school-boys and words of dictionaries. I shall only beg leave to add, that both these gentlemen were supported

ported by a numerous and very considerable party in the House, yet one of them was sent to the Tower; the other was reprimanded by the Speaker for expressions of far less indignity to Majesty, than those in the North Briton.

LET us now suppose, that these expressions had been uttered in the House. The natural warmth of speaking and disputing; the tone of voice; the gesture and action, with which they were uttered, might soften or excuse the insult they seemed to convey. They might be supposed to be spoken under the sanction of parliamentary privilege.

WE cannot imagine, that the malignity of them, if indeed there were any
malignity

malignity in the intention of the Speaker, could have any extraordinary effect upon the understanding of such an audience. They might happily in a little time be forgotten.

BUT infinite is the difference, when they are given to the people in general. It is confessed, they are not given as in the natural heat of disputation, or with the influence of gestures and tones of voice, but in the calmest and most deliberate act of the mind. Yet if we can imagine they were capable of any bad influence in the House of Commons, supposing them spoken there, what dreadful effects may we not expect from them, when addressed to an inconsiderate, ill-judging multitude? A
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multitude, apt to be inflamed by the grossest artifices; jealous of their liberties, yet credulous, and easily believing, though often deceived by professions of zeal and anxiety for their welfare. The words themselves cannot now be happily forgotten. They enter into our history, and are to be delivered down to our posterity.

THE supposed writer has appealed to the House of Commons, by pleading his privilege, as a Member, against the regular course of justice, to which every other subject must have been amenable. The House therefore will determine on the guilt or innocence of his paper. It is indeed of little importance, either to inquire or determine, whether the gen-

tleman is become this desperate and devoted patriot (not He, who leaped into the gulph, more devoted) from an excess of public virtue, or the distresses of his private fortune. It were little satisfaction for the mischiefs, which he has, perhaps unintentionally, occasioned, whether he shall be sent to the Tower, or expelled the House. But it is of capital and interesting importance, to have that unconstitutional claim for ever condemned, by which five hundred persons may hereafter assume a privilege of outraging their sovereign, in a manner, that a private gentleman could not bear without re-

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senting: A claim, by which they may with impunity write strange letters of menace and insult to Ministers of State, for acting according to the ancient and established forms of their office.

IMPOSSIBLE, that the wisdom and equity of our parliament should ever support such claims; and if the people shall ever submit to them, all ideas of liberty; all the other powers of this wisest frame of government are lost for ever. The constitution itself is lost: That constitution, by whose influence we are an envied, powerful and happy people: that constitution, which animates the labours of agriculture and manu-
fac-

factures; which gives spirit to commerce, and security to property; which inspires our soldiers with courage, and our sailors with intrepidity, is lost for ever.

RESENTMENT and indignation; shame and anxiety, here stop all further reflexions.

F I N I S.

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